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2022 Toronto Geriatrics Virtual Update Course

Updates on Medical Assistance in Dying
Friday, November 4, 2022

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Faculty/Presenter Disclosure



I have no actual potential or conflict of interest in relation to this presentation

Relationships with commercial interests:

- 1. Grants/Research Support: None**
- 2. Speakers Bureau/Honoraria: None**
- 3. Consulting Fees: None**
- 4. Other: None**

... WE NOW TURN TO AN EXPERT ON THIS SUBJECT, WHO DOESN'T ACTUALLY KNOW ANY MORE THAN WE DO, BUT HE LOOKS SINCERE, SOUNDS CONVINCING AND HAS 'DR.' IN FRONT OF HIS NAME.



Learning Objectives

1. Dissecting how MAID evolved over the last few years and legislative changes and criteria that have been updated
2. Describe the challenges of mental disorder as a sole underlying condition in determining eligibility for MAID
3. To share resources on facilitating MAID: information on how to make referrals, clinical tools, etc.

First Session, Forty-second Parliament,
64-65 Elizabeth II, 2015-2016

STATUTES OF CANADA 2016

CHAPTER 3

**An Act to amend the Criminal Code and to
make related amendments to other Acts
(medical assistance in dying)**

ASSENTED TO

JUNE 17, 2016

Second Session, Forty-third Parliament,
69-70 Elizabeth II, 2020-2021

STATUTES OF CANADA 2021

CHAPTER 2

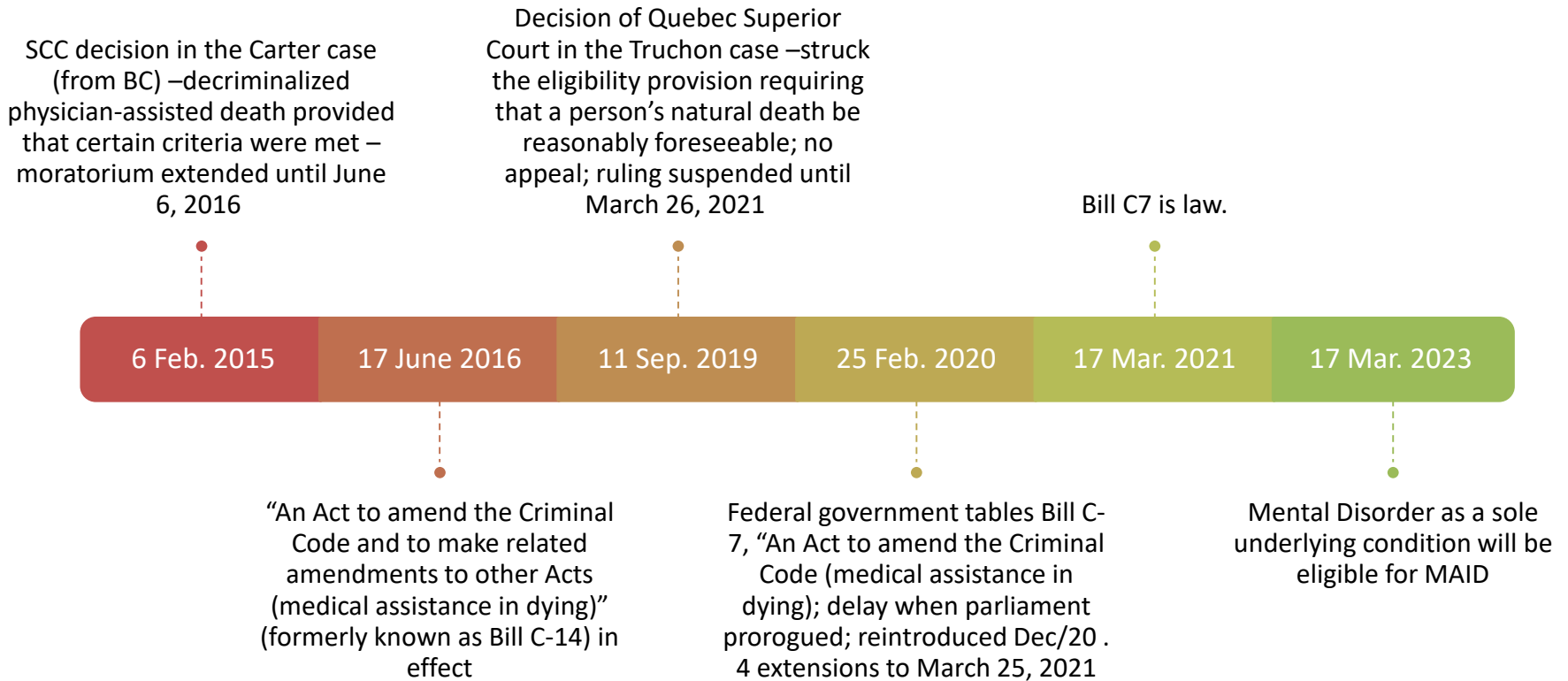
An Act to amend the Criminal Code (medical assistance in dying)

ASSENTED TO

MARCH 17, 2021

BILL C-7

MAID: The Background to the Current Legal Framework



What is Medical Assistance in Dying

Medical Assistance in Dying means:

(a) Administering by a doctor or nurse practitioner of a substance to a person, at their request, that causes their death;

or

(b) Prescribing or providing by a doctor or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death.

MAID is NOT:

- Withdrawal of life sustaining technology
- Withholding life sustaining technology
- Continuous Palliative or Terminal Sedation Therapy (as per Canadian Consensus guidelines Document)

MAID Eligibility Criteria C14 June 2016

- 18 years of age
- Eligible for Health Services in Canada
- Capable of making decisions wrt their health
- voluntarily requested with no evidence of external pressure
- informed consent including informing of all available means to relieve suffering including palliative care
- have a grievous & irremediable medical condition:
 - serious illness & disability
 - in advanced state of irreversible decline
- the condition causes enduring physical or psychological intolerable suffering that can not be relieved under conditions that they consider acceptable
- natural death is reasonably foreseeable
- persons with mental disorders were **explicitly excluded**

New Federal MAID Legislation (Bill C7) March 17, 2021

Permits assisted Dying for those where death is not reasonably foreseeable

Changes in eligibility criteria from Bill C14 (original MAID legislation):

1. The reasonably foreseeable death criterion is removed.
2. There are now 2 tracks:
 - a. Track 1: Natural Death is Reasonably Foreseeable (RFND)
 - b. Track 2: Natural Death is Not Reasonably Foreseeable (NRFND)
3. Mental illness as a sole underlying condition will be allowed after two years (March 2023) which permits provincial and territorial governments to develop professional standards and safeguards.

Procedural Safeguards

- A request for MAID must be made in writing and signed by 1 independent witness
- 2 independent physicians or nurse practitioners must provide assessments and confirm that all eligibility requirements are met
- The person must be informed that they can withdraw their request at any time
- The person must be given the opportunity to withdraw the consent and must expressly confirm their consent immediately before receiving MAID (this can be waived in certain circumstances)

Bill C7: Changes to safeguards

- The patient's written request for MAiD now only requires the signature of only one witness (used to be 2)
- A paid or personal health care worker or professional can now act as a witness
- Where death is reasonably foreseeable (Track 1)
 - The 10-day reflection period safeguard is removed
 - Advance requests are permitted if the capable patient signs a waiver of advance consent

Waiver of Final Consent

1. They are assessed as eligible
2. The MAiD procedure is scheduled
3. The patient is informed that they are at risk of losing decision-making capacity
4. Consent is given in writing
5. At the time of the procedure, the patient does not demonstrate, by words or gestures, refusal or resistance

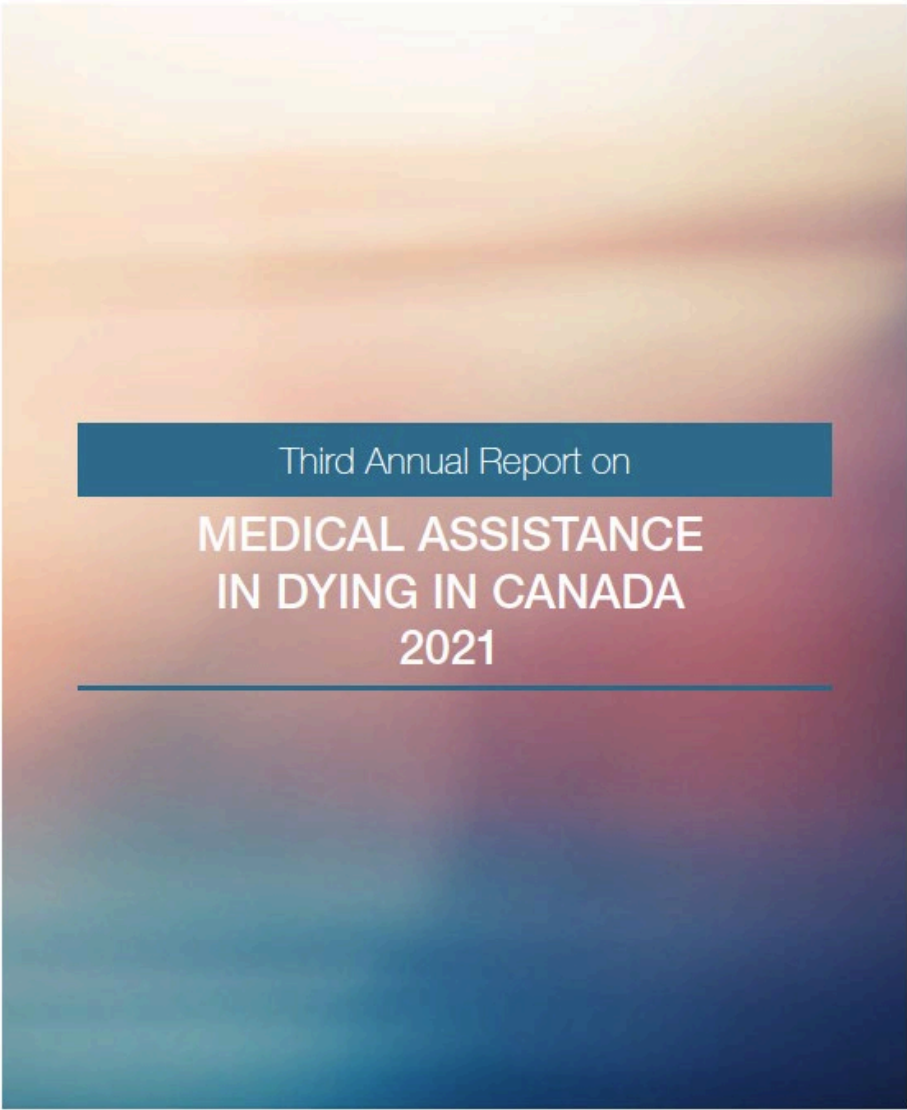
Bill C7: Additional Safeguards

For Track 2:

- One of two assessors must have expertise in the medical condition that causes the person's suffering.
- If neither of the 2 eligibility assessors has expertise in the medical condition causing the patient's suffering, one must consult with an expert who does
- A mandatory **minimum 90-day assessment period** from the time the first assessment begins unless loss of capacity imminent
- The patient must be informed of counselling, mental health supports, disability supports, community services and palliative care, and be offered consultation with relevant professionals, as available and applicable
- Practitioners must agree that the patient has appropriately considered reasonable means of alleviating their suffering

C7: Additional Monitoring & Non-legislative measures

- Assessors would now be required to report on: (1) verbal requests for MAiD and (2) preliminary assessments as to whether a person meets eligibility.
- Collection of race-based data required (study who and why is asking for MAiD & if there are inequities to access)
- Government intends to work with provinces and territories, health system partners and health practice regulatory bodies to develop, implement, monitor and report on MAiD practice guidelines, training and retrospective review processes and results.
- Work with provincial and territorial partners to enhance disability supports
- Parliamentary review pending wrt mature minors, advance requests, the state of palliative care in Canada the protection of persons with disabilities



Fast Facts: MAID Deaths in Canada in 2021

- **Provisions:** 10,064 (3.3% of all deaths) - **RFND:** 97.8%; **Non-RFND:** 2.2%
- **Growth rate:** 32.4% over 2020
- **Total # of deaths** since legalization of MAID in 2016: 31,664
- **Men:** 52.3% **Women** 47.7%
- **Average age:** 76.3 years (Range 18-91+)
 - 1. **Cancer:** 65.6% 2. **CVD:** 18.7% 3. **Chronic Resp:** 12.4%
4. **Neurodegenerative:** 12.4%

The majority of MAID recipients received palliative care and disability support services

- **80.7%** received Palliative Care (for a month or more)
- Of the **19.3%** who did not receive Palliative Care, **88%** had access to these services but chose not to receive them

Nature of Intolerable Suffering (Physical & Psychological):

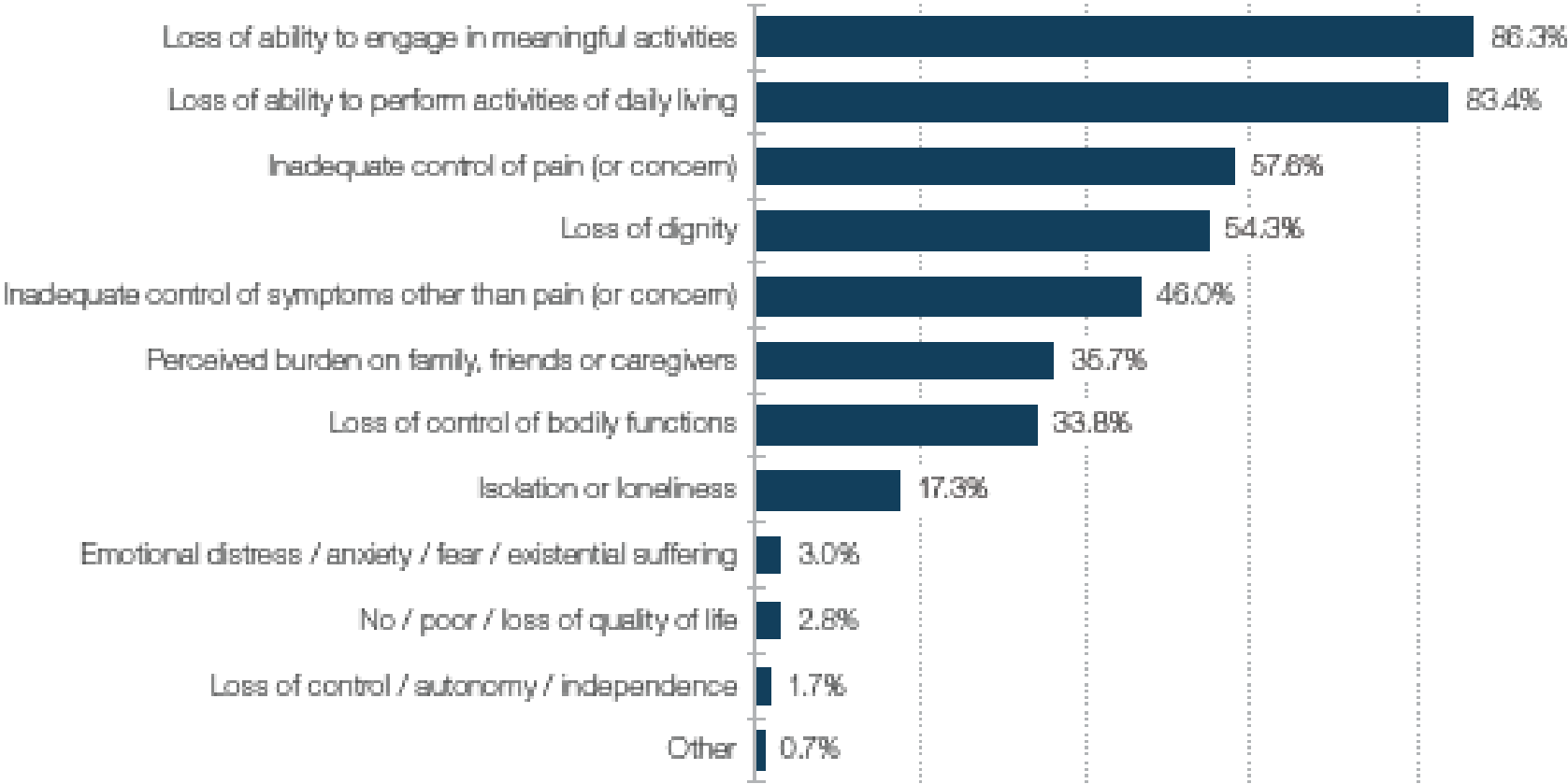
1. Loss of ability to engage in Meaningful Activities (**86.3%**)
2. Loss of ability to perform ADLs (**83.4%**)
3. Inadequate control of pain or concern about controlling pain (**57.6%**)

MAID Recipients who received Disability Support Services

Disability Support Services		
	Number	Percentage
Persons who required disability support services	4,278	43.0%
Persons who did not require disability support services	3,704	37.2%
Unknown	1,968	19.8%
Persons who received disability support services	3,741	87.4%
Persons who required but did not receive disability support services	179	4.2%
Disability support services were accessible if needed	131	73.2%
Disability Support – Duration		
Less than 6 months	1,544	41.3%
6 months or longer	1,325	35.4%
Unknown	872	23.3%

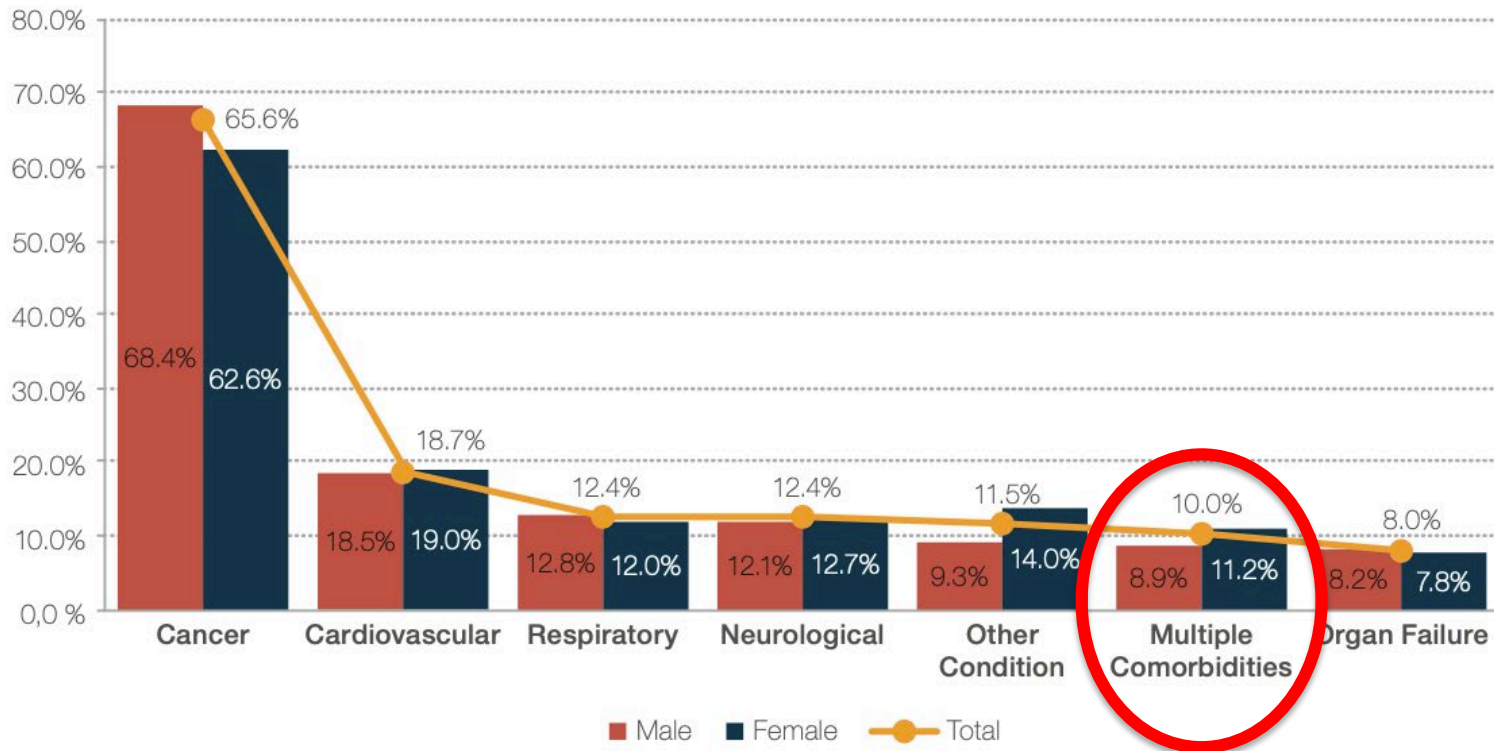
Nature of Intolerable Suffering

Chart 4.3: Nature of Suffering of Those Who Received MAID, 2021



MAID by Main Condition 2021 (RFND + NRFD)

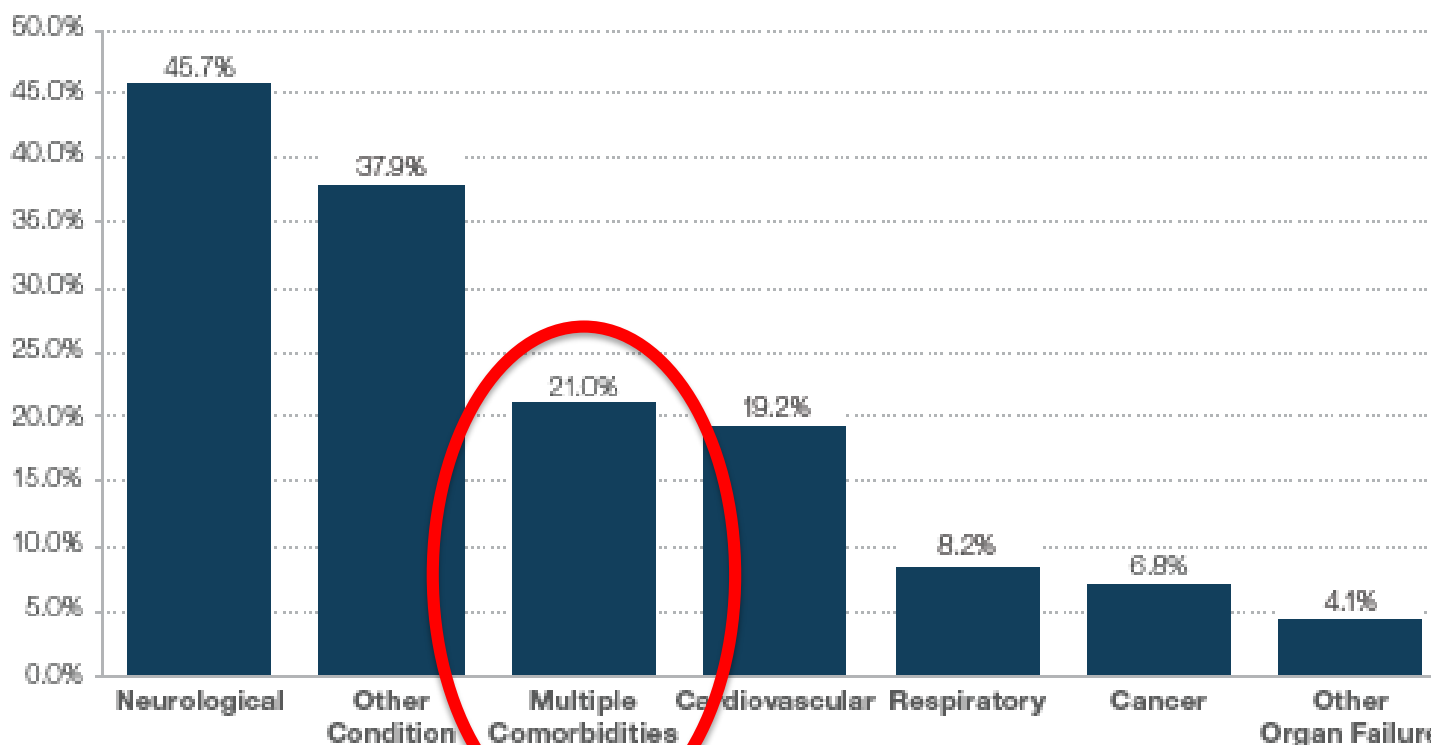
Chart 4.1A: MAID by Main Condition, 2021



Profile of Persons Receiving MAID Whose Natural Death is not Reasonably Foreseeable (Track 2)

- 219 individuals (2.2%) of MAID Recipients. Avg age = 70.1 yrs.

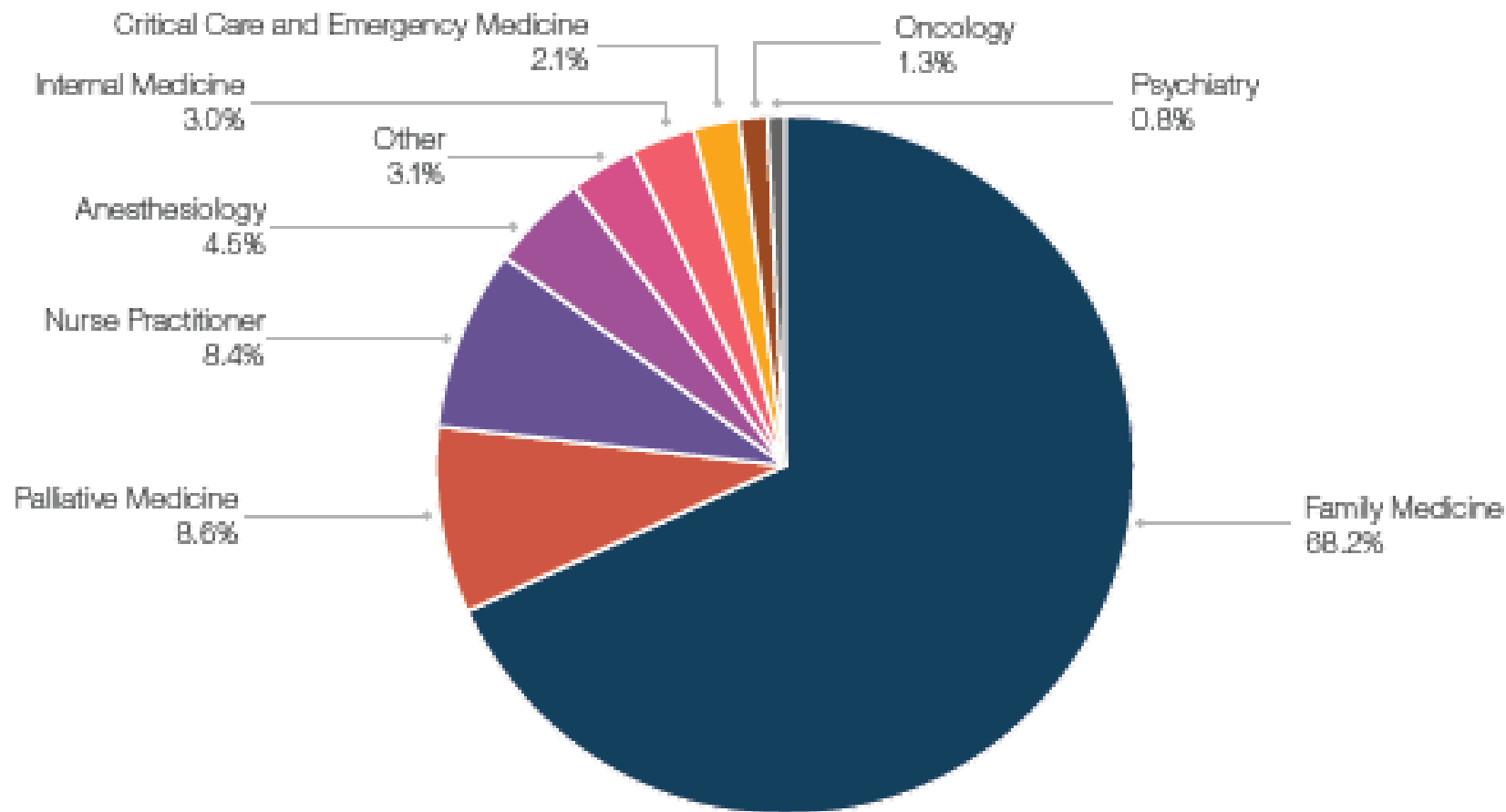
Chart 4.5: Main Condition: MAID, Non-RFND, 2021



MAID Practitioners: Specialty

1,577 providers – up 17.2% from 2020

Chart 5.4: Specialty of MAID Practitioner, 2021





Ontario man applying for medically-assisted death as alternative to being homeless



A St. Catharines man with a disability has passed the first hurdle for medical assistance in dying, he doesn't want to die but is afraid he is about to become homeless. CityNews delves into the ethics of choice versus an inadequate social safety net.

By Cynthia Mulligan and Meredith Bond

Posted Oct 13, 2022, 12:07PM EDT. Last Updated Oct 14, 2022, 8:34AM EDT.

MAID in Older Adults

1. Seniors with Frailty

- MAID does not have a specific eligibility category for geriatric syndromes
- Multiple co-morbidities was given as the main condition for **10%** of all MAID deaths in Canada in 2021*
- Includes diagnoses such as frailty, osteoporosis, osteoarthritis & fractures
- In the Netherlands, multiple geriatric syndromes is a distinct category for MAID (e.g. visual/hearing impairment, balance problems, OA, osteoporosis – 2.7% of all MAID deaths in 2019**)

MAID in Older Adults

2. Persons living with dementia

- A small number of individuals with neurological conditions (approximately **7.5% or 0.9%** of all MAID provisions) cited dementia (Alzheimer's disease, frontotemporal dementia, lewy body dementia, vascular dementia, mixed dementia, or simply dementia) as one of the underlying main conditions*
- All were deemed to be capable; If Track 1 (RFND), they would be eligible for a waiver of final consent. It cannot be used as an "Advanced Request" or to plan ahead for a future MAID procedure (as death would not be reasonably foreseeable)
- Risk: progression of dementia and timing of the procedure – serial assessments of capacity appears to be the way – "10 minutes to midnight" is used in the Netherlands**

Future Directions for MAID legislation

- Eligibility for mature minors
- Allowing for advance requests (for those with dementia or a major neuro-cognitive disorder)
- Ongoing review of those living with disabilities
- No date set – but likely not too far off
- MD-SUC
- Introduction of advance requests → major impact on serious illness and ACP conversations

Mental Disorder as a Sole Underlying Medical Condition (MD-SUMC)

- Bill C7 temporarily excluded eligibility for those with mental disorder as the sole underlying condition for 24 months (until March 2023).
- Provided additional time to study how MAID for those with MD-SUMC can be provided safely with appropriate safeguards in place
- An expert review task force will make recommendations and must conclude with 1 year of initiation



See artwork captions inside

Final Report of the Expert Panel on
MAiD AND
MENTAL ILLNESS

The Major Concerns about MAID MD-SUC

- **Incurability & Irreversibility (irremediability)**
 - Limited knowledge about long-term prognosis
 - Difficult if not impossible for many conditions to make accurate predictions in any one individual patient
- **Capacity**
 - Presumption: All adults - including those with mental disorders—have decision-making capacity: the ability to provide informed consent or refusal to the healthcare interventions proposed to them.
 - Assessing capacity can be difficult – especially in situations in which symptoms of a condition or life experience can subtly influence the ability to understand and appreciate the decision that has to be made

The Major Concerns about MAID MD-SUC

Suicidality

- In considering MAiD requests for persons who have mental disorders, it must be recognized that thoughts, plans and actions to bring about one's death may also be a symptom of the very condition which is the basis for a request for MAiD.
- In any situation where suicidality is a concern determine:
 1. a person's capacity to give informed consent or refusal of care
 2. whether suicide prevention interventions—including involuntary ones—should be activated
 3. offer other types of interventions which may be helpful to the person

Structural Vulnerability



The Major Concerns about MAID MD-SUC

- **Intersection of structural vulnerability, mental disorder and MAiD**
 - Structural vulnerability can influence suffering and contribute to viewing death as one's only option
 - A MAID request may mask profound unmet need or
 - A MAID request may not be received with the seriousness it deserves especially with respect to historically marginalized populations
 - A clinician must always consider whether the person's circumstances are a function of systemic inequality and inequities

The Major Concerns about MAID MD-SUC

- **Elderly Persons with Mental Disorders**
- **Persons with Intellectual Disabilities**
- **Persons who are incarcerated**



Challenges for MD-SUMC as a criteria for MAID

- Disease must still be grievous & irremediable
- Can irremediability be determined for mental disorders?
- Are there 2 types of irremediability?
 1. That of the illness itself
 2. That of the patient's ability to adapt to the illness
- If death doesn't have to be reasonably foreseeable now, the relief of suffering through a future intervention is always possible
- How do you balance the uncertainty of remediation of an illness with the patient's right to self-determination and their own experience of suffering?

Challenges for MD-SUMC as a criteria for MAID

- Determination of capacity is treatment specific:
 - Do we need a higher or more stringent threshold for capacity for more complex decisions such as MAID?
 - Or is this discriminatory and stigmatizing for patients with mental disorders?
 - Mental Disorders in and of themselves do not imply incapacity to make decisions
 - All patients are assumed to have decision making capacity unless proven otherwise
 - A patient can have capacity in some areas and not others
 - Capacity can fluctuate over time

Challenges for MD-SUMC as a criteria for MAID

Safeguards:

- Comprehensive assessment of mental disorder over time
- Durability of the request
- Voluntariness of the request
- Robust eligibility assessment process
- Oversight process



Challenges for MD-SUMC as a criteria for MAID

- Bill C7 requires that a clinician with expertise in the patient's condition be consulted for patients who are eligible for MAID through Track 2 (NRFD)
 - What will be the impact of this relatively limited resource?
 - What about limited access to this expertise – access is inequitable across the country
 - What if clinicians disagree on irremediability of a mental health disorder?

Challenges for MD-SUMC as a criteria for MAID

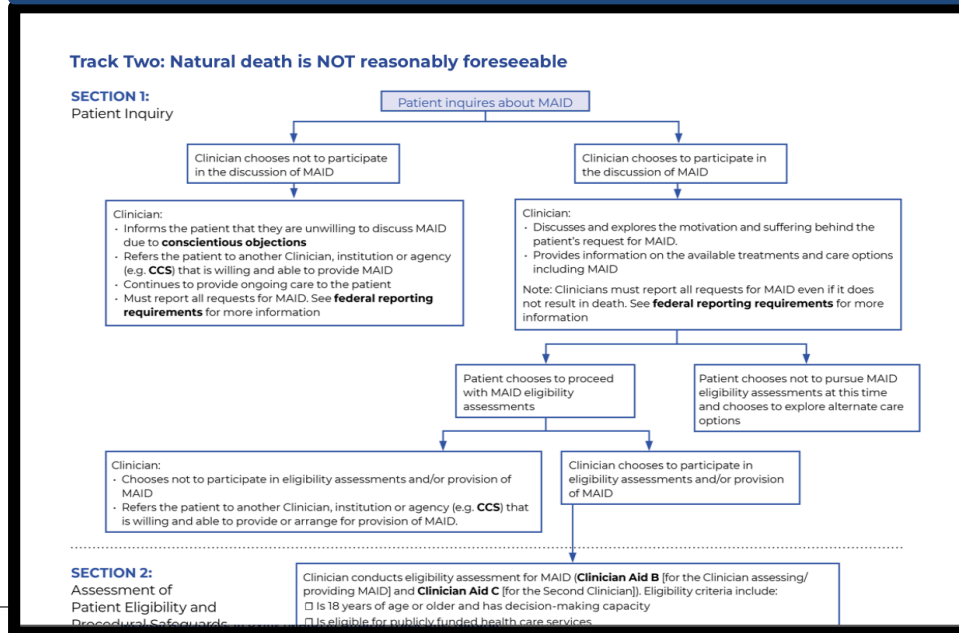
- Voluntariness can be difficult to assess in patients with a Mental Disorder
 - Pts with Mental Disorder may be more easily influenced by others
- What about the values/bias of a treating psychiatrist?
How does that influence accessibility to MAID?
- Oversight varies from jurisdiction to jurisdiction. Are they robust enough to safeguard vulnerable patients?

Resources

- The Ontario care **co-ordination service** information line is available 24 hours a day, 7 days a week and may be reached toll free at **1-866-286-4023**.
- Ministry of Health – MAID:
<https://www.health.gov.on.ca/en/pro/programs/maid/>
- **Clinical Tool:** Everything you wanted to know about MAID provision in Ontario – Centre for Effective Practice (MAID):
<https://cep.health/clinical-products/medical-assistance-in-dying/>

https://tools.cep.health/tool/medical-assistance-in-dying-maid-in-ontario-track-two-natural-death-is-not-reasonably-foreseeable/

The screenshot shows the CEPPortal website interface. At the top left is the CEPPortal logo. The main heading is "Medical Assistance in Dying" with a sub-heading "Introduction". Below the introduction is a "Table of contents" section with a link "About the Tool". On the right side, there is an "Access" section with four blue buttons: "Medical Assistance in Dying (MAID) in Ontario Track One: Natural Death is Reasonably Foreseeable", "Medical Assistance in Dying (MAID) in Ontario Track Two: Natural Death is NOT Reasonably Foreseeable", "Volet 1 de l'aide médicale à mourir (AMM) en Ontario : La mort naturelle est raisonnablement prévisible", and "Volet 2 de l'aide médicale à mourir (AMM) en Ontario : La mort naturelle n'est PAS raisonnablement prévisible".



Summary

- Bill C7 no longer requires death to be reasonably foreseeable
- Track 1 (RFD) and Track 2 (NRFD)
- A clinician with expertise has to be consulted for any person on Track 2
- Persons with MD-SUC will be eligible for MAID In March 2023
- Numerous challenges to assessing eligibility for persons with MD-SUMC

Thank you!

23:3 Autumn 2007
Journal of Palliative Care
*Palliative Care
for the
Elderly*

